

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	
MONTGOMERY WARD, LLC, <u>et al.</u> ,)	Chapter 11
)	Case No. 00-4667 (KG)
Debtors.)	
)	
PLAN ADMINISTRATOR OF MONTGOMERY)	
WARD, LLC, <u>et al.</u> and THE PA COMMITTEE)	
OF MONTGOMERY WARD, LLC, <u>et al.</u>)	
)	
Appellants,)	Case No.: 08-201 (JJF)
)	
v.)	
)	
DIKA-WARD, LLC,)	
)	
Appellee.)	
)	
DIKA-WARD, LLC.,)	
)	
Appellant,)	
)	
v.)	Case No.: 08-202 (JJF)
)	
PLAN ADMINISTRATOR OF MONTGOMERY)	
WARD, LLC, <u>et al.</u> , and THE PA COMMITTEE)	
OF MONTGOMERY WARD, LLC, <u>et al.</u> ,)	
)	
Appellee.)	
)	

**MOTION TO CONSOLIDATE APPEALS
AND SET BRIEFING SCHEDULE**

DIKA-WARD, LLC, Appellee, Cross-Appellant herein ("Dika-Ward"), make its motion to consolidate the related appeals filed by The Plan Administrator for Montgomery Ward

LLC and the PA Committee of Montgomery Ward, LLC, et al. (collectively, the "Plan Administrator") and Dika-Ward and set a single briefing schedule relating to such appeals; and in support thereof, states as follows:

1. On March 12, 2008, the Bankruptcy Court issued its Memorandum Opinion and Order relating to the cross motions for summary judgment filed by Plan Administrator and Dika-Ward ("Judgment").
2. On March 21, 2008, the Plan Administrator filed his notice of appeal from the Judgment ("PA Appeal").
3. On March 27, 2008, Dika-Ward filed its notice of cross-appeal from the Judgment ("Cross-Appeal").
4. The appellate records have been designated by the Plan Administrator and Dika-Ward with respect to the PA Appeal and Cross-Appeal.
5. The appellate briefing in the PA Appeal and Cross-Appeal were stayed pending the required mediation relating thereto. Recently, the mediator reported to this Court that the mediation, despite the good-faith efforts of Dika-Ward and the Plan Administrator, was unsuccessful.
6. Dika-Ward has engaged the Plan Administrator in a dialogue regarding the consolidation of the PA Appeal and Cross-Appeal and an agreed briefing schedule relating thereto. These efforts have been unsuccessful thereby necessitating this Motion.
7. By this Motion, Dika-Ward requests that this Court consolidate the PA Appeal and Cross-Appeal for purposes of appellate briefing and oral argument. The complex issues in these appeals flow from the same series of facts and related pleadings (cross motions for summary judgment and related documents). The arguments relating to the

issues in these appeals were made in a single hearing before the Bankruptcy Court that culminated in the entry of the Judgment (a set of rulings by the Bankruptcy Court in a single Memorandum Opinion). Under these circumstances and in order to further judicial economy, consolidation of the PA Appeal and Cross-Appeal are warranted.

8. Dika-Ward further requests that this Court set the following single briefing schedule with respect to the PA Appeal and Cross-Appeal:

- A) Opening brief of Plan Administrator relating to issues presented in PA Appeal to be filed on or before September 8, 2008;
- B) Consolidated response brief relating to issues presented in PA Appeal and opening brief relating to issues presented in Cross-Appeal to be filed by Dika-Ward on or before October 6, 2008;
- C) Consolidated reply brief relating to issues presented in PA Appeal and response brief relating to issues presented in Cross-Appeal to be filed by the Plan Administrator on or before October 27, 2008; and
- D) Reply brief of Dika-Ward relating to issues presented by the Cross-Appeal on or before November 17, 2008.

9. Dika-Ward understands that the proposed schedule is somewhat extended. However, the issues in the PA Appeal and Cross-Appeal are complex. Likewise, the appellate records are extensive. The appellate briefing with respect to these appeals will be difficult and time-consuming. Furthermore, primary counsel for Dika-Ward has pre-existing scheduling issues that necessitate the proposed briefing schedule. These scheduling issues include the filing of an appellate brief in the Seventh Circuit Court of

Appeals and the completion of over twenty (20) depositions in a \$50,000,000.00 fraudulent transfer case before the discovery completion deadline.

10. Primary counsel to Dika-Ward has made reasonable efforts to reach agreement with Counsel to the Plan Administrator on the matters set forth in this Motion; namely, consolidation of the PA Appeal and Cross-Appeal and a briefing scheduling relating thereto. However, despite such efforts, no agreement on these issues has been reached by the parties. This statement is made in order to comply with D. Del. LR 7.1.1.

WHEREFORE, DIKA-WARD, LLC, Appellee, Cross-Appellant herein, prays for the entry of an Order as follows:

- A) Consolidating the PA Appeal and Cross-Appeal;
- B) Setting the proposed appellate briefing schedule; and
- C) Granting such other relief as may be just and appropriate.

Respectfully submitted,

Dated: August 11, 2008

FERRY, JOSEPH & PEARCE, P.A.

/s/ Theodore J. Taccconelli
Theodore J. Taccconelli (No. 2678)
Steven G. Weiler (No. 4934)
824 Market Street, Ste. 904
P.O. Box 1351
Wilmington, DE 19801
(302) 575-1555

-and-

CRANE, HEYMAN, SIMON, WELCH & CLAR
David K. Welch, Esq.
Arthur G. Simon, Esq.
Glenn R. Heyman, Esq.
135 S. LaSalle, Ste. 3705
Chicago, IL 60603
(312) 641-6777

-and-

NEAL & LEROY, LLC
Thomas W. Goedert, Esq.
Bradley A. Smith, Esq.
203 N. LaSalle, Ste. 2300
Chicago, IL 60601
(312) 641-7144

Counsel for Dika-Ward, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2008, I electronically filed the foregoing Motion to Consolidate Appeals and Set Briefing Schedule using the CM/ECF, which will send notification of such filings to the following:

Daniel B. Butz, Esq.
Morris, Nichols, Arsh & Tunnell LLP
1201 N. Market Street
Wilmington, DE 19801

I hereby certify that on August 11, 2008, I have mailed, by United States Postal Service, the document to the following non-registered participant:

Cathy Hershkopf, Esq.
Richard S. Kanowitz, Esq.
Brent Weisenberg, Esq.
Cooley Godward Kronish LLP
1114 Avenue of the Americas
New York, NY 10036

/s/ Theodore J. Tacconelli
Theodore J. Tacconelli (No. 2678)
Steven G. Weiler (No. 4934)
FERRY, JOSEPH & PEARCE, P.A.
824 Market Street, Suite 904
Wilmington, DE 19899
(302) 575-1555
ttacconelli@ferryjoseph.com
sweiler@ferryjoseph.com